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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

CARRIE B.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN COUNTY,

Respondent,

KERN COUNTY DEPARTMENT OF HUMAN  
SERVICES,

Real Party In Interest.

F038996

(Super. Ct. No. JD93149)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. James M. Stuart, Judge.

Rory E. McKnight, for Petitioner.

No appearance for Respondent.

B. C. Barmann, Sr., County Counsel, and Mark L. Nations, Deputy County Counsel, for Real Party In Interest.

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\*Before Ardaiz, P.J., Dibiaso, J., and Buckley, J.

Petitioner Carrie B. seeks extraordinary writ review (Welf. & Inst. Code,<sup>1</sup> § 366.26, subd. (l); Cal. Rules of Court, rule 39.1B) of respondent court's order that a section 366.26 hearing be held January 17, 2001, as to her son Justin. We find petitioner's writ petition facially inadequate pursuant to California Rules of Court, rule 39.1B(j). Accordingly, we will dismiss the writ petition.

### **PROCEDURAL AND FACTUAL BACKGROUND**

Two-year-old Justin was taken into protective custody on January 26, 2001, following the death of his 39-day-old brother, Charles. Charles asphyxiated on a paper towel lodged in his throat. Charles also had injuries indicative of child abuse: multiple rib fractures, generalized bruising and rectal damage suggestive of forced anal penetration. After a police investigation, petitioner's husband and Justin's father, Christopher, was arrested.

On January 30, 2001, the Kern County Department of Human Services (department) filed a petition alleging that Justin came within the juvenile court's jurisdiction under section 300, subdivisions (a), (b), (d), (f) and (j). As to petitioner, the petition alleged the following:

“a-2 [Justin] is at risk of suffering serious physical harm inflicted non-accidentally by [petitioner]. On January 26, 2001, [Justin's] one-month-old sibling, [Charles], died as a result of injuries received from [petitioner]. [¶] . . . [¶]

“b-2 [Justin] is at risk of suffering serious physical harm or injury due to the failure of [petitioner] to protect [him] from the conduct of [his] alleged father, [Christopher]. [Petitioner] knew or reasonably should have known that [Justin] was at risk of suffering physical harm inflicted by [Christopher]. [¶] . . . [¶]

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

“d-2 [Justin] is at risk of being sexually abused by [petitioner]. [Justin’s] sibling, [Charles], has been sexually abused in that [Charles] has been anally penetrated. [¶] . . . [¶]

“f-2 [Justin] is at risk of suffering serious physical harm or injury from [petitioner], as [petitioner] caused the death of [Charles]. [¶] . . . [¶]

“j-2 [Justin’s] sibling, [Charles], has been physically and sexually abused by [petitioner], and [Justin] is at risk of being physically and sexually abused by [petitioner] as well....

“j-3 [Justin’s] half-siblings, [Jacob K. and Alexis K.], have been neglected by [petitioner], and [Justin] is at risk of being neglected by [petitioner] as well. On July 10, 1997, [Justin’s] half-siblings were adjudged dependent children of the court under [section 300, subdivisions (b), (g) and (j)] for the half-sibling, [Jacob K.] and [section 300, subdivisions (a) and (g)] for the half-sibling, [Alexis K.] and both were removed from [petitioner’s custody], due to [petitioner’s] medical neglect, physical abuse and failure to protect. Family Reunification Services for [petitioner] and these half-siblings were terminated on August 17, 1998. On August 7, 2000, a permanent plan of legal guardianship was established for these half-siblings and their dependency status was dismissed.”

Petitioner denied the allegations and a contested jurisdictional hearing was set for March 20, 2001. In its social study report prepared for the jurisdictional hearing, the department quoted liberally from the investigative reports. The reports established Charles was subjected to severe physical abuse and that the parents gave vague and inconsistent accounts of the circumstances surrounding his death. Petitioner revealed Charles did not “look right.” However, when she attempted to take him for medical treatment, Christopher warned her that Charles would be taken away from her. She had also observed Christopher apply ointment to Charles’s anus with a Q-tip. Other evidence implicated Christopher. During a forensic interview, Justin stated that Christopher hit Charles and “made the baby die.”

The contested jurisdictional hearing was continued and conducted on April 26, 2001. Pathologist Dr. Donna Lee Brown detailed Charles’s injuries. During her external

examination, she noted that Charles had fresh scratches and pinch or slap marks on his face, eyelids and nose area, trauma to the upper part of the gum and lip and a bruise on the top of the right ear and back of the head. Some of the injuries had been inflicted within 24 hours of his death and were, according to Dr. Brown, readily discernible to anyone caring for him. Dr. Brown also observed bruising on Charles's lower back and noted a tear in the anal mucosa. On further examination, Dr. Brown discovered a prior tear four inches into the rectal wall and bowel perforation. As a result, Charles suffered chronic and acute inflammation of this area. Dr. Brown opined that such an injury was caused by insertion of an object larger than a thermometer. Additionally, Dr. Brown stated that such repetitive trauma to the bowel area compromised Charles's sphincter control, resulting in dribbling fecal matter. Dr. Brown also noted that Charles's anal area was scraped and infected. She attributed that to someone having applied tape over the anal area and fecal matter accumulating near the skin.

During her internal examination, Dr. Brown discovered that Charles sustained multiple newly inflicted and healing rib fractures. Also, Charles was underweight and had a very small amount of ingested intestinal contents. Dr. Brown also noted that Charles was severely bloated, consistent with a forced compression of the chest which caused the tissues and organs to fill with air. The forced compression of the chest was also consistent with the multiple rib fractures. Dr. Brown stated that Charles's injuries would have caused him great pain and noticeable discomfort.

The court found that allegations b-2, f-2, j-2 and j-3 were true as to petitioner and that allegations a-2 and d-2 were not true. The court set the matter for a May 11, 2001, dispositional hearing. In its dispositional report, the department recommended the court not provide reunification services to petitioner because she failed to prevent Charles's death and to reunify with Jacob and Alexis. A contested dispositional hearing was set for May 14, 2001.

At the dispositional hearing, petitioner's counsel informed the court that Justin is a member of the Cherokee Nation of Oklahoma. Disposition was continued to resolve the issues of transfer of the case to the Cherokee Nation and relative placement. On September 19, 2001, the Cherokee Nation declined to accept the case in transfer.

A status review hearing was conducted on September 12, 2001. The court received testimony from Roberta Fernandez, a certified Indian Child Welfare Act<sup>2</sup> trainer. Ms. Fernandez stated that petitioner's failure to protect her children fell below the child rearing standards of the American Indian Tribe and she concurred with the department that Justin would be at risk if placed in petitioner's care. Case worker Terry Tuck testified she developed a case plan for petitioner early in the dependency proceedings and petitioner had completed all elements of the plan. However, despite her compliance, Ms. Tuck did not believe petitioner had alleviated the cause for Justin's removal.

Argument was concluded on September 17, 2001. The court denied petitioner reunification services and set a permanency planning hearing for January 17, 2001. This petition ensued.

## **DISCUSSION**

Real party in interest argues the petition should be dismissed as facially inadequate. We concur.

"The procedural requirements for a petition for extraordinary writ challenging a trial court's decision to terminate reunification services and set a permanency planning hearing are set forth in rule 39.1B(j): 'The petition for extraordinary writ shall summarize the factual basis for the petition. Petitioner need not repeat facts as they appear in any attached or submitted record, provided, however, that references to specific portions of the record, their significance to the grounds alleged, and disputed aspects of

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<sup>2</sup> Indian Child Welfare Act, 25 U.S.C. § 1901 et. seq.

the record will assist the reviewing court and shall be noted. Petitioner shall attach applicable points and authorities....’ ” (*Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, 577.)

In this case, the petition consists of four incomplete issue statements:<sup>3</sup>

- “1. Inadequate expert testimony of an expert as required by the Indian Child Welfare Act:
2. Failure to provide efforts to provide remedial services and rehabilitative programs as required by federal law;
  3. Failure to recognize that the mother had completed the plan of reunification provided by the Department of Human Services; and
  4. Failure to follow statutory guidelines in determining the appropriate placement of the minor.”

Petitioner makes no attempt to summarize the facts or develop the legal issues with reference to the law and record. To comport with the requirements of rule 39.1B would require this court to engage in an independent review of the record. Such an independent review is unwarranted. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.)

Accordingly, we dismiss the petition as facially inadequate.

### **DISPOSITION**

The petition for extraordinary writ is dismissed.

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<sup>3</sup> Petitioner timely filed a skeletal petition for extraordinary writ on October 26, 2001. Attached to the petition was a letter requesting additional time to file points and authorities. In an order filed on October 26, 2001, this court granted petitioner 10 days from the date of the order within which to file a supplemental petition. Petitioner failed to file a supplemental petition.